

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Sylvie VAN DER WERF et al.	)	Group Art Unit: 1648
	)	
Application No.: 10/581,354	)	Examiner: Peng, Bo
	)	
Filed: April 12, 2007	)	
	)	Confirmation No.: 2044
For: USE OF PROTEINS AND	)	
PEPTIDES ENCODED BY THE	)	
GENOME OF A NOVEL SARS-	)	
ASSOCIATED CORONAVIRUS	)	
STRAIN	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**DECLARATION UNDER 37 C.F.R. § 1.131**

I, Nicolas Escriou do hereby declare that:

1. I am one of the inventors of the subject matter in the present application, and am familiar with its content. A copy of the published application, U.S. Patent Application Publication No. 2007/0275002, is attached as **Exhibit 1**.

2. On information and belief, U.S. Patent Application Publication No. 2007/0105193 by Vilalta *et al.* (*Vilalta*; attached as **Exhibit 2**) has been cited as prior art under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) against the pending claims of the above-identified application. A copy of the claims as amended with the Response filed concurrently are attached as **Exhibit 3**.

3. Prior to May 16, 2003, which is the earliest priority date claimed by *Vilalta* (to U.S. Provisional application No. 60/470,820), we had completed, in France, the invention claimed in the above-identified application.

4. Evidence supporting the fact declared in paragraph 3 is as follows: on May 12, 2003 bacteria containing the plasmids TOP10F'-SARS-S1 and TOP10F'-SARS-S2 were deposited with the Collection Nationale de Cultures de Microorganismes (CNCM) and assigned deposit Nos. I-3020 and I-3019, respectively. These plasmids contain overlapping cDNAs encoding the 5' and 3' portions of the SARS-CoV and their sequences are given in the application as SEQ ID NOs: 5 and 6, respectively. See *also* paragraphs [0361]-[0363] and Table 1 of the published application. Together these sequences encode the entire open reading frame of the SARS-CoV Spike protein. Deposit receipts and viability statements for CNCM deposit Nos. I-3020 and I-3019, dated May 12, 2003, are attached as **Exhibit 4** and **Exhibit 5**, respectively.

5. The evidence described in paragraph 4 shows that we had reduced to practice the invention claimed in the above-identified application, in France, before May 16, 2003, which is the earliest priority date claimed by *Vilalta*.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Dated: November 10, 2003

By: 

Nicolas Escriou